

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

11/15/85
R-II
29851

FILE: B-214639.2 **DATE:** November 26, 1984

MATTER OF: Delta Support Services, Inc.

DIGEST:

Protest based upon the alleged disclosure of the protester's cost proposal in the agency report to GAO is untimely where not filed within 10 working days after the protester received the report.

Delta Support Services, Inc. protests the proposed award of a contract to the Stanwick Corporation under solicitation No. N00421-83-R-0125 issued by the Department of the Navy for technical and engineering services. We dismiss the protest.

Delta alleges that its price was disclosed to Stanwick and other offerors during our consideration of a bid protest filed earlier by another offeror, JDR Systems Corporation.^{1/} The basis for this allegation is a statement contained in the agency report that JDR's cost proposal was "more than \$1 million more expensive than the company receiving the highest technical rating." Delta contends that 1) it was the offeror receiving the highest technical rating; 2) Stanwick received a copy of the report, and 3) using the information in the report, Stanwick was able to calculate Delta's proposed cost and submit a revised cost proposal (in response to the agency's request for best and final offers) which was substantially lower than its original cost proposal and lower than Delta's cost proposal.

Stanwick alleges that the protest is untimely under our Bid Protest Procedures which require that protests such as this be filed within 10 working days after the basis of protest is known or should have been known. See 4 C.F.R. § 21.2(b)(2) (1984). Stanwick asserts that Delta's basis

^{1/}The protest, which was against JDR's exclusion from the competitive range, was denied in JDR Systems Corporation, B-214639, Sept. 19, 1984, 84-2 CPD ¶ 325.

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of protest arose when it received a copy of the agency report sometime in June,^{2/} and notes that Delta's protest was not filed until October.

Delta apparently believes that its basis of protest did not arise until it received notice of the proposed award to Stanwick. We disagree.

Delta's fundamental complaint is that its proposed cost was disclosed to other offerors prior to the submission of best and final offers. This allegation is based on a statement in the agency report to GAO. The cover letter to the report indicated that copies had been sent to the protester and other interested parties. Accordingly, upon receipt of the report, Delta knew or should have known of its basis for protest. It was not entitled to wait until it also knew that the agency proposed to award to another offeror before it protested an action of which it had long been aware. We therefore consider the protest untimely.

For the protester's benefit, however, we point out that there appears to be no merit to its protest. The agency report did not reveal JDR's cost proposal^{3/} and we fail to see how, without that information, another offeror could calculate with any accuracy the cost proposed by "the company receiving the highest technical rating."

Further, Stanwick denies ever having received the report or any information concerning its contents. Stanwick also asserts that its best and final cost proposal in fact was not substantially lower than its previous proposal.

^{2/}The exact date of receipt is unknown. Our records show, however, that Delta acknowledged receipt of the report on June 15 in a phone conversation with the GAO attorney handling the case.

^{3/}Although the report contained cost information for all offerors at Appendix 2, the agency did not release that portion of the report to the protester or interested parties.

In that connection, the agency has informally advised us of the costs proposed by Stanwick and Delta in their best and final offers and their prior proposals. These figures show that Stanwick reduced its cost by only about .015 percent in its best and final offer and that this reduction did not in fact bring it below Delta's prior proposed cost.

Accordingly, we regard Delta's assertion that its cost proposal was revealed to Stanwick as purely speculative. Moreover, even if we assume that Delta's assertion is correct, no prejudice to Delta is apparent.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel